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IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1692 of 1992

For Approval and Signature:

Hon'ble CHIEF JUSTICE MR DM DHARMADHIKARI

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? :

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANUBHAI MOHANBHAI PARMAR

Versus

DEPUTY DIST DEVELOPMENT OFFICER

Appearance:

MR NIKHIL KARIEL for BP TANNA for Petitioner
MR HS MUNSHAW for Respondent No. 1, 2

CORAM : CHIEF JUSTICE MR. D.M. DHARMADHIKARI

Date of decision: 06/10/2000

ORAL JUDGEMENT

1. The petitioner was in service of District

Panchayat, Banaskantha on the post of Junior Clerk. On charges of several financial irregularities, disciplinary action was instituted against him by issuance of charge sheet on 2-5-1989.

2. It is not in dispute that the petitioner did not submit any reply to the charges. The enquiry officer then noticed him for appearance. According to the petitioner's case, he appeared before the enquiry officer twice. The above fact has been controverted by the respondents on behalf of the employers stating on affidavit that in the whole enquiry proceedings, only once the petitioner appeared and he never availed of any opportunity to defend himself in the course of enquiry. After conclusion of the enquiry, the enquiry officer had prepared enquiry report, but, the copy of the same was not supplied to the petitioner.

3. The petitioner was, however, served with a show cause notice proposing punishment based on the enquiry report on 22-4-1991. The second show cause notice also remained unanswered. The petitioner was dismissed from service on 1-11-1991, which has been assailed in this Court by this petition.

4. In the course of hearing, since the copy of the enquiry report was not furnished to the petitioner and the same was also not placed before this Court, directions were issued to the respondents as employers to produce a copy of the enquiry report. Pursuant to the directions, a reply affidavit along with a copy of the enquiry report has been filed.

5. Learned counsel appearing for the petitioner has taken me through the relevant part of the enquiry report and submitted that therein findings have been recorded and conclusions drawn contrary to the allegations in the charge sheet. Learned Counsel for the petitioner strongly relies on the decision of Supreme Court in the case of Managing Director, ECIL, Hyderabad v. B. Karunakar AIR 1994 SC 1074 in which earlier decision of the Supreme court in the case of Union of India v. Mohd. Ramjankhan AIR 1991 SC 471 was explained. It was held that supply of copy of the enquiry report at the conclusion of enquiry is a necessary requirement, as part of constitutional guarantee of grant of reasonable opportunity of defence to the delinquent under Article 311 of the Constitution of India. In the case of Karunakaran (supra) the Supreme Court has however held that non-supply of copy of enquiry report is not necessarily fatal to the enquiry unless the Court finds

that non-supply of enquiry report has in fact resulted in serious and material prejudice to the delinquent.

6. On behalf of the employer, learned counsel points out that the petitioner did not submit any reply to the charge sheet served on him on 2-5-1989. He also did not submit any reply to the show cause notice dated 22-4-1991. In the course of enquiry proceedings also except appearing twice, as is claimed on his behalf, no effective participation was made. It is not possible to accept that the petitioner, despite service of summons issued by the enquiry officer, was not aware that enquiry had been instituted against him, and might be concluded against him with passing of order of punishment.

7. This is a case where the petitioner as delinquent has failed to avail the opportunity of participating in the enquiry. At two stages, i.e, at the time of issuance of charge sheet and after service of second show cause notice before imposing a punishment, it was possible for him to participate in the enquiry. At that stage, he could have demanded a copy of the enquiry report and other evidence led in the enquiry against him.

8. Learned counsel for the petitioner, relying on the decision in the case of Karunakaran (supra), submits that even where the delinquent has not demanded the copy of the enquiry report, the constitutional requirement is that he must be supplied with a copy of the enquiry report.

9. I have gone through the conclusions recorded by the Constitution Bench of the Supreme Court in the case of Karunakaran (supra). It nowhere lays down that in case where a delinquent has been served with a charge sheet followed by show cause notice proposing punishment and he fails to submit any reply, or participate in the enquiry, yet, it is necessary to supply copy of the enquiry report to him.

10. The enquiry report has now been supplied to the petitioner in the course of hearing before this Court. Learned counsel prays that this Court should now remand the matter to the disciplinary authority for a fresh enquiry from the stage of supply of copy of the enquiry report.

11. Keeping in view the fact that the petitioner virtually boycotted the enquiry proceedings and deliberately refused to enter appearance by showing his unwillingness to avail opportunity of defending himself,

it would be a sheer formality now to remand the case to the disciplinary authority from the stage of supply of copy of the enquiry report.

12. Learned counsel for the petitioner then made some attempt to assail the findings recorded in the enquiry report by the enquiry officer. As the petitioner did not participate in the enquiry, this Court declines to reappreciate the evidence and come to a different conclusion.

13. Lastly, learned counsel for the petitioner submits that the charges levelled are only of temporary retention of some small amounts of money belonging to the Panchayat. There is no financial loss caused to the Panchayat. The evidence does not show any serious misconduct on the part of the petitioner. The punishment of dismissal imposed, it is stated, is unduly harsh and disproportionate to the charges held proved.

14. It is settled law that this Court can interfere in the quantum of punishment only when punishment imposed is found to be shockingly disproportionate. As is pointed out on behalf of the employer, there are several instances where amounts ranging from Rs. 2000 to 3000 were retained illegally by the petitioner for a period of two to three months.

For the aforesaid financial irregularities, the punishment imposed cannot be held to be shockingly disproportionate as to justify interference by this Court.

Consequently, the petition is dismissed. Rule is discharged with no order as to costs.

(D.M. DHARMADHIKARI, C.J.)

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